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No. 87-772

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

FRANK C. PASTERNAK, et al.,
Plaintiffs-Appellants
v.
SAGITTARIUS RECORDING CO., et al.,
Defendants-Appellees.

IN RE:
HALLISON H. YOUNG, Attorney for Plaintiffs-Appellants,
Petitioner,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED

WHETHER THE CHIEF JUDGE ERRED IN DENYING PETITIONER'S MOTION FOR THE APPOINTMENT OF A HEARING PANEL OF THREE JUDGES OTHER THAN THE THREE COMPLAINING JUDGES?

PARTIES

Additional parties not listed in the caption are Respondents Chief Judge Pierce Lively, Circuit Judge Boyce F. Martin, Jr., Circuit Judge Nathaniel R. Jones, and Circuit Judge Harry W. Wellford.

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Petitioner, Hallison H. Young, respectfully petitions for a writ of certiorari to review the Hearing Panel, Circuit Judges Boyce F. Martin, Jr., Harry W. Wellford and David A. Nelson of the United States Court of Appeals for the Sixth Circuit indefinitely suspending the Petitioner from practice in the 6th circuit.

OPINIONS BELOW

The opinions of the court of appeals (App. A through I , infra, pp 1a - 30a) are not reported.

JURISDICTION

The jurisdiction of this court is invoked pursuant to 28 U.S.C. §§ 1254(1), 2101(c), and Rule 20 of the Rules of this court. Also, see In re Robert J. Snyder, 472 U.S. 634 (1985).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the Constitution provides in pertinent part:

> "No person shall be *** compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. ***"

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 144 provides:

> "§144. Bias or prejudice of judge
>
> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.
>
> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It

shall be accompanied by a certificate of counsel of record stating that it is made in good faith." (As amended May 24, 1949, c. 139, § 65, 63 Stat. 99.)

28 U.S.C. § 455(a), (b)(1) provides:

"§ 455. Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;"
(As amended Dec. 5, 1974, Pub.L. 93-512, § 1, 88 Stat. 1609; Nov. 6, 1978, Pub.L. 95-598, Title II, § 214 (a), (b), 92 Stat. 2661.)

28 U.S.C. § 1927 provides:

"§1927. Counsel's liability for excessive costs

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies to proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct. (As amended Sept. 12, 1980, Pub.L. 96-349, § 3, 94 Stat. 1156.)"

COURT RULES INVOLVED

FRAP 46(b), (c), reads:

"(b) Suspension or Disbarment. When it is shown to the court that any member of its bar has been suspended or disbarred from practice in any other court of record, or has been guilty of conduct unbecoming a member of the bar of the court, the member will be subject to suspension or disbarment by the court. The member shall be afforded an opportunity to show good cause, within such time as the court shall prescribe,

why the member should not be suspended or disbarred. Upon the member's response to the rule to show cause, and after hearing, if requested, or upon expiration of the time prescribed for a response if no response is made, the court shall enter an appropriate order.

(c) Disciplinary Power of the Court over Attorneys. A court of appeals may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules or any rule of the court. (As amended Mar. 10, 1986, eff. July 1, 1986.)"

6th Cir. Rule 6 reads:

"Admission of Attorneys. The procedure for the admission, suspension, disbarment or disciplining of attorneys shall be as prescribed in Rule 46 of the Federal Rules of Appellate Procedure and the Sixth Circuit Rules of Disciplinary Enforcement. Every

applicant for admission shall pay a fee of $25.00. Said fee shall be used for the Library Fund of this court and for such other purposes as may be determined by the Judicial Council of the Sixth Circuit. An attorney who is appointed by the court to represent a party in forma pauperis and is qualified for admission, shall be admitted to practice in this court without payment of the admission fee. (Amended Mar. 25, 1981.)"

6th Cir. Disciplinary Rule V.D. reads:

"Disciplinary Proceedings. * * *
D. Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation this court shall set the matter for prompt hearing before one or more Judges of this court, provided however that if the disciplinary proceeding is predicated upon the complaint of a judge of this court the hearing shall be conducted before a panel of three other judges of this court appointed by the Chief Judge."

STATEMENT OF THE CASE

On 10/24/85, Appellants Frank C. Pasternak et al., filed a notice of appeal from a summary judgment in the United States District Court for the Eastern District of Michigan. The appeal was amended on 11/13/85. By letter dated 10/30/85, a deputy clerk advised that the appeal had been docketed as #85-1875.

On 11/14/85, a Formal Appearance of Counsel for Hallison H. Young, Civil Appeal Pre- Argument Statement and the Transcript Order were submitted and Petitioner made arrangements for payment of the transcript with the court reporter, which was acknowledged on 11/18/85.

On 11/27/87, a deputy clerk sent a letter which erroneously recited that the case had been dismissed for failure to file the transcript purchase order and make proper arrangements for transcript. (App. J, infra, p. 31a - 32a)

Pursuant to Appellants' motion to reinstate the appeal, on 1/14/86, the 6th Cir. entered an order reinstating the appeal. (App. Q, infra, p. 50a) ,

On 3/10/86, a deputy clerk informed Appellants' counsel that Appellants' brief was due by 4/22/86. On 4/21/86, Appellants' counsel filed a motion for extension of time to file brief and appendix to and including 7/31/86. On 5/2/86, the deputy clerk informed Appellants' counsel that Appellants' motion for extension of time to file the brief had been granted pursuant to 6th cir. R. 4(f) and that Appellants' brief must be received in the clerk's office by 5/20/86 and the joint appendix must be received by 7/10/86.

Pursuant to further request for an extension, a deputy clerk, by letter dated 5-21-86, granted Appellants' counsel a

further extension to file Appellants' brief until 6/4/86.

On 6/1/86 and within the extension granted, Appellants' counsel served and filed Appellants' Opening Brief. Also, a disclosure of corporate affiliation and financial interest dated 5-30-86 was submitted under separate cover on 6-2-86 and the deputy clerk was so advised in response to her letter of 5/5/86. The clerk's office granted the Appellants an extension of time to include the corporate disclosure in the briefs (which were admittedly received 6/2/86) until 6/19/86.

The deputy clerk's letter of 5/21/86 stated that the joint appendix must be received by the clerk's office by 7/28/86. By letter dated 8/4/86, the clerk extended the due date for the joint appendix until 8/18/86. On 8/15/86, Frederick A. Patmon filed a motion for enlargement of time to

file joint appendix until 9/29/86. On 8/21/86, the clerk docketed Mr. Patmon's entry of appearance for appellants. (App. J., infra, p. 31a) By cover letter and order dated 8/22/86, Appellants' motion to file joint appendix was granted, which provided in pertinent part that

> "It is ORDERED that the appeal is hereby dismissed, unless the joint appendix is received for filing by the court no later than September 5, 1986.
> The appellee request for attorney fees and costs is denied." (App. R , infra, p. 52a)

On 9/5/86, Frederick A. Patmon filed appellants' joint appendix and a motion for permission to file joint appendix out of time, which was received 9-8-86 and granted on 9-8-86 by the clerk pursuant to sixth cir. Rule 4(f). (App. S , infra, p. 53a)

On 9/11/86, the Booth Lipton Appellees filed a motion for reconsideration of the clerk's September 8, 1986 order granting Appellants' motion for extension of time for filing the joint appendix which was referred to the hearing panel consisting of Judges Boyce F. Martin, Jr., Harry W. Wellford and David A. Nelson, and was denied in their decision of 4/1/87. In the Booth Lipton motion, their counsel requested that the court "impose sanctions against appellants' counsel as authorized under IOP 12.9, said sanctions to include an award of actual attorneys fees expended, in the amount of eight hours of attorney time at a rate of $70.00 per hour [$560.00]." (Motion for reconsideration, p 6). (App. T , infra, p. 55a)

In a decision filed 4/1/87, Respondents Martin, Wellford and Nelson concluded sua sponte that Petitioner should

"pay Booh Lipton the sum of $560.00" und 28 U.S.C. § 1927. Booth Lipton had no standing to participate in the supposed disciplinary proceeding, Phillips, 510 F.2d 126 (2nd Cir. 1975), yet all papers and all proceedings were captioned in the civil appeal Frank C. Pasternak et al. v. Sagittarius Recording Co.

In orders filed 6/17/87 and 7/22/87, Respondents Martin, Wellford and Nelson concluded sua sponte that Petitioner was already guilty of "misconduct during the pendency of this appeal" (App. C, infra, p. 16a) without referring the matter to counsel for investigation and review and before a court finding of probable cause (Rule of 6th Cir. Rules of Disciplinary Enforcement). The supposed disciplinary proceedings were predicated solely upon the complaint of Respondents Martin, Nelson and Wellford. Booth Lipton never sought

attorney fees under § 1927. Booth's motion for reconsideration was denied. (App. A, infra, p.5a). Booth sought attorney fees under 6th Cir. IOP 12.9. The Sixth Circuit Court denied Both Lipton's motion for attorney fees by order of 8/22/86. (App. J, infra, p. 32a). Petitioner was not the attorney for Appellants when events relating to the joint appendix occurred (i.e., July, 1986 - October, 1986). (App. J, infra, p. 32a)

Also included in the Appendix are the following papers which are essential to the understanding of the instant petition:

1) Sixth Circuit Order of Reinstatement of 1/14/86

2) Sixth Circuit Order of 8/22/86

3) Sixth Circuit Order of 9/8/86

The Booth Lipton Appellees' request for attorney fees in connection with their motion for reconsideration was not supported by affidavit or other documentary

proof and the Hearing Panel did not conduct an evidentiary hearing with respect to the amount of or the reasonability of the request for attorney fees of $560.00. Respondents denied Booth Lipton Appellees' motion for reconsideration, but granted their request for attorney fees. (Decision 4/1/87, Appendix A, infra, p. 5a)

Respondents Martin, Wellford and Nelson acted as the hearing panel on 6th Cir. appeal case No. 85-1875 and also tried and heard the issue of the assessment of attorney fees against Petitioner Young under 28 U.S.C. § 1927 and the alleged "misconduct" and sua sponte issued, as the complainants, the orders of 6/17/87 and 7/22/87 against Petitioner Young.

On 6/17/87, Respondents Martin, Wellford and Nelson issued an order to show cause why Petitioner's name should not be withdrawn from the Sixth Circuit Court of Appeals attorneys roll, inter alia, on the

grounds that the court had ordered Petitioner to pay Booth Lipton Appellees' counsel $560.00 in response to "Appellees' motion for attorney fees" due to Appellants counsel's "misconduct" during the pendency of the appeal and because Petitioner had "not complied with this court's orders". (App. C, infra, p.17a)

On 7/3/87, pursuant to the order to show cause, Petitioner filed his response, a motion to dismiss, objections, and affirmative defenses, denying all charges of misconduct and incorporated his motion to dismiss the order to show cause.

On 7/6/87, Petitioner filed an Emergency Motion for Appointment by the Chief Judge of a Panel of Three Judges Other Than the Complaining Panel and Motion to Dismiss Order to Show Cause Filed 6/17/87. This motion was considered by Chief Judge Lively

and denied without the entry of an order. Its disposition was orally communicated to Respondents Martin, Nelson and Wellford. See order of 7/22/87. (Appx. D, infra, p. 22a) When Petitioner complained to the chief deputy clerk of the Sixth Circuit Court on 7/27/87, Judge Lively then caused a written order to be entered in the form of Appx. E, infra, p. 24a . Although Respondent Lively did not authorize the Hearing Panel to set the matter for hearing until his order of 7/30/87, the Hearing Panel had already set the matter for hearing on 8/5/87 at 3:45 p.m.

At no time did Respondents appoint an independent counsel, as required by Rule V of the Sixth Circuit Disciplinary Rules, to conduct an investigation to determine whether reasonable cause existed to issue an order to show cause pursuant to Rule 46(b) or Rule 46(c) F R A P and 6th Cir.

Local Rule 6. Both show cause orders of 6/17/87 and 7/22/87 were initiated solely by Respondents, which facially recite and reflect them acting concurrently in investigatorial, prosecutorial and adjudicatorial roles and functions. (App. C & D, infra, pp. 16a and 19a)

After Petitioner filed his response to the 6/17/87 order to show cause and asserted his defenses, objections and other information in mitigation thereof, Respondents Martin, Nelson and Wellford increased the charges of alleged misconduct as enumerated in the order of 7/22/87. (App. D, infra, p. 22a)

The 7/22/87 order directed Petitioner to show cause why the court should not consider and impose "'appropriate disciplinary action' (including action under 46(b), if any such action is indicated), on the appellate record and proceedings in this case with respect to the conduct of

said attorney for appellants." (App. D, infra, p. 23a)

On 8/5/87, Respondent Martin misrepresented and issued a bench opinion/order that:

(a) Petitioner's motion to disqualify the Hearing Panel, which presented a threshold question, had been considered by the Chief Judge and denied and that a copy of the order of denial had been forwarded to Petitioner at the address reflected on the last papers in the record. These representations are not true. Petitioner's motion to disqualify the panel had neither been considered by the chief judge nor the panel of Judges Nelson, Wellford and Martin. (App. F, infra, p. 25a) See ex parte order filed 8/10/87 reciting that "[w]e advised Mr. Young that we overruled his motion this panel is disqualified and that it should recuse itself from further

participation in this case." This statement is untrue. See certified copy of transcript of 8-5-87. (App. F, infra, p. 26a)

(b) The Booth Lipton attorneys requested attorney fees under 28 U.S.C. § 1927. This statement is untrue. See docket entry item #29 (Motion/Appellee [Booth]: to reconsider granting extension of time; sanctions; award of attorney fees [$560.00] under 6th Cir. IOP 12.9). (App. F, infra, p. 26a-27a)

(c) On 5/18/87, the aspects of the Hearing Panel's opinion of 4/1/87 and order of 5/7/87 became a nonreviewable and non-appealable judgment against Mr. Young pursuant to which Booth Lipton may execute against Mr. Young. This is an erroneous conclusion of law. The question of the attorneys fees was neither litigated in the district court nor the court of appeals. See Petitioner's response and defenses,

docket entries #s 44, 45, 51 and 52. (App. J, infra, p33a,34a). No judgment was either entered in the district court or the court of appeals as to the assessment against a non-party, Hallison H. Young, of a $560.00 attorneys fee in favor of Booth Lipson. (See docket entries 35, 40.) (App. J, infra, p. 33a)

(d) Petitioner neither filed a motion for reconsideration nor was a request for a stay made from the decision of the Panel. But, see Judges Martin, Wellford and Nelson's order of 5/7/87 that: "No further motions or petitions will stay that [Booth Lipton $560.00] obligation". (Order Denying Petition for Rehearing 5/7/87.) (App. B, infra, p. 11a, 15a).

On 7/27/87, Petitioner submitted a motion to disqualify Judges Martin, Nelson and Wellford. (Docket R 50.) (App. J, infra p. 34a). On 8/5/87, Judge Martin

represented that "Your motion to disqualify the panel" has been "denied" by the "chief judge" and that Petitioner's attorney had received a copy of the order of denial. Judge Martin was informed that Petitioner's counsel had not received a copy of any such order. Yet, Judges Martin and Wellford continued with the proceedings. (Transcript of 8/5/87, pp 1-2). (App K, infra, p. 36a)

On 8/10/87, Judges Wellford and Martin issued an order which reads:

> "We advised Mr. Young that we overruled his motion that this panel is disqualified and that it should recuse itself from further participation in this case. We found no basis in fact or in law in the record that this panel is biased or prejudiced or that there is any appearance of impropriety in our hearing and deciding the sanctions aspect of this case." (App. F, infra, p. 26a)

No such advise was given. No such ruling was made. No such finding was made. (See transcript of 8/5/87 proceeding.) (App. K, infra, p. 35a-46a).

The 8/10/87 order recites that "a hearing was granted Attorney Hallison H. Young on August 5, 1987". But, see the transcript of 8/5/87. Petitioner was not granted a hearing as required by either FRAP 46, U.S. Const. Am. V or 6th Cir. Local Rule 6. (Transcript 8/5/87, pp 1-11.) Under the pains and circumstances reflected (in part) by the transcript of 8/5/87, the Petitioner, subject to and without waiver of any defenses and objections, remitted and sent via certified mail $560.00 in the form of a cashier's check to the clerk of the court on 8/8/87. (See check, certification, receipt and return.) (App. L, M, N, O, P, infra, pp.47a-51a).

On 8/12/87, Petitioner's attorney was informed by Mr. Tom Bennignus and Ms. Marjorie Eliasen that the check was not received until 8/12/87. Ms. Eliasen acknowledged that "we always have problems

in receiving mail from Detroit" (Emphasis added) Thereafter, Mr. Leonard Green, chief deputy clerk, admitted that he informed the panel on 8/10/87 that the clerk had not received the said check, but omitted to inform the panel of the "problems" experienced by the clerk's office in receiving mail from Detroit.

On 8/12/87, the clerk's office sent Petitioner's cashier's check of $560.00 to Booth Lipton "pursuant to the direction of the court". (App., P, infra, p. 51a).

Petitioner's second motion to disqualify Respondents and vacate the ex parte order of 8/10/87 (indefinitely suspending Petitioner from practicing law before the 6th Cir) and motion for recall of or to vacate mandate were denied by Respondents on 9/10/87 and 8/25/87, respectively. (App. H & I, infra, pp. 29a and 30a).

At the 8/5/87 event, Respondent Martin initially stated: "I will proceed with this scheduled hearing under Federal Rule of Appellate Procedure 46" (App. K, infra, pp. 37a), but later recanted and restricted the proceeding to whether Petitioner paid Booth Lipton $560.00, "That's the only issue we have before us."(App. K, infra, p. 39a, 42a). Respondent Martin reiterated the panel's position, to wit:

> "If he does not pay it, we do not (sic [want]) him practicing before our court, because he has refused to comply with an order of our panel. There is a judgment that is a final judgment." (App. K, infra, p. 41a).

REASONS FOR GRANTING WRIT

THE HEARING PANEL'S ASSESSMENT OF ATTORNEYS FEES AGAINST PETITIONER WITHOUT PRE-ASSESSMENT NOTICE AND AN OPPORTUNITY TO BE HEARD DENIED PETITIONER DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS

The clerk, having granted Appellants' extensions pursuant to 6th Cir. Local Rule 4(f) which incorporates Local Rule 8(c) (which permits the clerk to dispose of motions and applications relating to appendices), the Hearing Panel's denial of Appellees' motion for reconsideration by decision of 4/1/87, constituted the law of the case. Consequently, the 6th Cir.'s prior finding of good cause shown and justification by Appellants and their counsel bars and judicially estops the 6th Cir. from later claiming that Petitioner Young's conduct constituted "misconduct" within the ambit of F R A P 46(c).

Booth Lipton never sought sanctions under 28 U.S.C. § 1927. See page 6 of Appellee Booth Lipton's Motion for Reconsideration dated September 10, 1986.

Their request was for sanctions under 6th Cir. IOP 12.9. By implication, Appellees made an unsubstantiated claim for attorneys fees of $560.00 (allegedly $70.00 per hour times 8 hours) for time allegedly spent in preparation of the motion for reconsideration. Compare hearing panel's incongruous decision of 4/1/87 at page 3 which denied the motion for reconsideration but granted Appellee's request for attorneys fees. Ergo, the hearing panel knowingly assessed attorney fees against Petitioner personally at $560.00 when it found Appellee's motion for reconsideration to be without merit. Since the panel denied the Appellee's motion for reconsideration, it lacked power and authority to issue said sanctions. The hearing panel's "belief" that "Booth Lipton's motion for attorney fees meets the test of 28 U.S.C. § 1927" is neither supported by any facts or law. The

panel's purported reliance upon Coston v. Detroit Edison Co., 789 F.2d 377 (6th Cir. 1986) is wholly misplaced. The panel failed and refused to conduct a due process evidentiary hearing as to the alleged "procedural defaults of plaintiffs' counsel" referenced at pages 2 and 3 of the 4/1/87 decision (which were contested and disputed by Appellants' counsel) and the Booth Lipton's lawyers' claim for attorney fees (which were hotly contested and disputed). Goss v. Lopez, 419 U.S. 565, 579 (1975); Roadway Express Inc. v. Piper, 447 U.S. 752, 767 (1980). Accord: Jones v. Continental Corp., 789 F.2d 1225, 1232 (6th Cir. 1986) (a hearing to resolve factual issues must precede any award of attorney's fees awards under 28 U.S.C. § 1927). The hearing panel refused to require that Appellees' counsel submit affidavits in support of this bare claim for attorney's fees. See Roadway Express Inc. v. Piper,

supra, at 767; Donaldson v. Clerk, 105 F.R.D. 526, 532 (M.D. Ga. 1985) (attorneys fees determined upon submission of appropriate affidavits); Eastway Const. Corp. v. City of New York, supra, at 577.

The record is devoid of any finding by the hearing panel that Petitioner multiplied proceedings "unreasonably and vexatiously". The two (2) incidents referred to by the hearing panel at pages 2 and 3 of its decision of 4/1/87 do not rise to the level of the type of conduct contemplated by 28 U.S.C. § 1927. See, e.g., Kort Brake Corp. v. Harbil, Inc., 738 F.2d 223; Jones v. Continental Corp., supra, at 1232; compare North A.M. Foreign Trading Corp. v. Zale Corp., 83 F.R.D. 293, 297 (S.D. N.Y. 1979); United States v. Ross, 535 F.2d 346, 349 (6th Cir. 1976).

The record is devoid of any finding by the hearing panel that Petitioner engaged in any conduct of the nature and magnitude

to be liable under 28 U.S.C. § 1927. Badillo v. Central Steel & Wire Co., 717 F.2d 1160, 1166 (7th Cir. 1983); Reid v. United States, 715 F.2d 1148, 1154 (7th Cir. 1983); Overnite Transportation Co. v. Chicago Industrial Tire Co., 697 F.2d 789, 795 (7th Cir. 1983); United States v. Ross, 535 F.2d 346, 349 (6th Cir. 1976) ("a serious and studied disregard for the orderly process of justice").

The hearing panel failed to find "that the costs had been vexatiously increased by conduct that amounted to a 'serious and studied disregard for the orderly process of justice'". Ross, supra, at 350. Accord: T.W. Elec. Service v. Pacific Elec. Contractors, 809 F.2d 626 (9th Cir. 1987). Moreover, the hearing panel failed to give Petitioner notice and a hearing prior to the imposition of the sanctions under § 1927. Id. at 638; United States v.

Blodgett, supra; Roadway Express Inc. v. Piper, supra (Section 1927 only authorizes the taxing of excess costs arising from an attorney's unreasonable and vexatious conduct, it does not authorize imposition of sanctions in excess of costs reasonably incurred because of such conduct).

Circuit Judge Martin knew that problems do arise "when counsel submits to the appeals court a motion for attorney's fees that, as here, raises disputed issues of fact." Wolfel v. Bates, 749 F.2d 7, 8 (6th Cir. 1984). Consequently, the panel should have granted Petitioner's motion to recall or vacate the mandate of the 4/1/87 decision. (App. H , infra, p. 29a)

Due process requires, at a minimum, notice and an opportunity to be heard "appropriate to the nature of the case". Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 738, 42 L.Ed.2d 725 (1975) quoting Mullane

v. Central Hanover Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652, 656, 94 L.Ed. 865 (1950). In Roadway Express Inc. v. Piper, supra, the Supreme Court noted that "attorney's fees certainly should not be assessed lightly or without fair notice and an opportunity for a hearing on the record".

The question of the attorneys fees was neither litigated in the district court nor the court of appeals. See Respondent's respones and defenses, docket entries 44, 45, 51 and 52. Faced with the factual issue regarding the validity of the rate charged for the Booth Lipton attorneys fees and hours expended by them, the hearing panel, as Circuit Judge Martin did in Wolfel v. Bates, supra, should have deferred to superior fact-finding powers of the district court or conducted a due process evidentiary hearing. No judgment

either entered in the district court or the court of appeals as to the assessment against a non-party, Hallison H. Young, of a $560.00 attorneys fee in favor of Booth Lipton. (See App. J , infra, p. 33a), docket entries 35, 40; 9 Moore's Federal Practice, Entry of Judgment ¶ 236.02; see, also, Mandate ¶ 241.02[2].)

THE PROCEDURES UTILIZED AND EMPLOYED BY THE HEARING PANEL AT THE 8/5/87 HEARING REGARDING THE SHOW CAUSE ORDERS OF 6/17/87 AND 7/22/87 WERE SO LACKING IN NOTICE, SPECIFICITY OF CHARGES AND OPPORTUNITY TO BE HEARD AS TO CONSTITUTE AN INTENTIONAL DEPRIVATION OF DUE PROCESS AND EQUAL PROTECTION OF THE LAWS

An attorney disciplinary proceeding is subject to due process scrutiny. In re Ruffalo, 390 U.s. 544 (1968); In re Bithoney, 486 F.2d 319, 323 (1st Cir. 1973).

In view of the gravity of the punishment which may be meted out under F.R.A.P. 46, including suspension and all its

consequential damages, the test must be a very severe one. Id.

Before the hearing panel issued its order of 6/17/87 ostensibly pursuant to subrule 46(c) Fed.R.App.P., they well knew that subdivision (c) was not effective until July 1, 1986 -- some 6 months after the so-called "procedural defaults of plaintiffs' counsel" and the alleged "missed deadlines on the part of the counsel for plaintiffs-appellants" occurred.

As experienced circuit judges, their bypassing of subrule 46(b) procedure and the 6th Cir. Disciplinary enforcement procedure was clearly intentional and by design. Although the Committee Notes to subdivision (c) of Rule 46 Fed.R.App.P. provides in relevant part that "The purpose of this provision is to make explicit the power of a court of appeals to impose sanctions less serious than suspension or

disbarment for the breach of rules", they issued the show cause pursuant to subrule 46(c) seeking a sanction more severe than suspension or disbarment.

Although subrule 46(c) is to impose sanctions for "conduct unbecoming a member of the bar or for failure to comply with these rules or any rule of the court", the hearing panel knew that there had been neither finding that Petitioner had committed "conduct unbecoming a member of the bar" nor a finding that Petitioner had breached any of the rules of the court. (See petition, supra, pp. 19 - 25)

The procedure employed by the hearing panel in the matter sub judice was clearly a denial of due process of law not only because the judges actually became part of the prosecution and assumed an adversarial position, but was because as judges they passed on Petitioner's alleged guilt

without ever conducting a due process hearing or trial and without any evidence in the record whatsoever. E.g., see the phantom conviction for "misconduct referenced in the order of 6/17/87. Such conduct by the hearing panel as the investigators, the accusers, the prosecutors and the adjudicators violates procedural and substantive due process and equal protection of the laws. See In re Murchison, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942 (1955); Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970); Johnson v. Mississippi, 403 U.S. 212, 215, 91 S.Ct. 1778, 29 L.Ed.2d 423, 427 (1971); Morrissey v. Brewer, 408 U.S. 471, 485-486, 92 S.Ct. 2583, 33 L.Ed.2d 484, 497 (1972). The merging of the investigative, prosecutorial and adjudicative functions by the hearing panel in this so-called disciplinary process as relates to Petitioner resulted in a

procedure and circumstances so lacking in notice and opportunity to be heard and fairness as to constitute a deprivation of due process and equal protection of the laws. See Withdraw v. Larkin, 421 U.S. 35, 58 (1975).

It clearly appears that both the 6/17/87 and 7/22/87 orders were drafted in a manner which was facially vague and unintelligible so as to not clearly set forth the facts of the alleged misconduct and to notify Petitioner of the grounds of the complaints against him, so that he would be able to have an opportunity to explain and defend them. Compare MCR 9.115(B); Rules 8, 9 and 10 Fed.R.Civ.P. Also, see Ex parte Robinson, 86 U.S. (19 Wall.) 505, 512-513 (1874); In re Ruffalo, supra; Burkett v. Chandler, 505 F.2d 217, 222 (10th Cir. 1975); Committee on Professional Ethics & Griev. v. Johnson, 447 F.2d 169 (3rd Cir. 1971). Neither order to show

cause purports to be a complaint nor purports to comply with any pleading requirements. See In re Primus, 436 U.S. 412, 421 n. 13 (1977). Such orders to show cause in the normal course of disciplinary proceedings would never have mustered the pleading requirements. See In re Ruffalo, supra, at 544 n. 3.

The record on appeal irrefutably and affirmatively shows that Judges Martin, Nelson and Wellford failed to give Petitioner notice prior to 6/17/87 that the prior proceedings were being tried and considered as disciplinary proceedings and that he was being tried and convicted of professional misconduct. Such failure constitutes a violation of U.S. Const. Am. V. See In re Ruffalo, supra, at 544. Petitioner was entitled to notice prior to oral argument on February 10, 1987 that he was being charged by the Booth Lipton appellees' counsel and Judges Martin,

Wellford and Nelson with processional misconduct and that they were trying him during oral argument for professional misconduct, and before the commencement of such charges. Ibid, at 544. Under the circumstances, the failure of the Booth Lipton appellees' counsel and Judges Martin, Wellford and Nelson to give Petitioner such notice became a trap when, after the filing of the motion for reconsideration, after oral argument, after the filing of the decision of 4/1/87, after the petition for rehearing, 6/17/87, Judges Martin, Wellford and Nelson issued their first order to show cause charging and therein purporting to convict Petitioner of "misconduct" based on the prior proceedings. The trap was further tightened when Judges Martin, Wellford and Nelson amended and expanded the charges in their 7/22/87 order on the basis of the alleged conduct and acts of Petitioner occurring during the

prior appellate proceedings. In re Ruffalo, supra, at 544. By way of example, both orders to show cause (i.e., 6/17/87 and 7/22/87) are post-appeal and decision 4/1/87 which purport to charge Petitioner with alleged failure to comply with prior orders of the court. Yet, the so-called factual basis for the charges allegedly refer to facts occurring during the appeal process during a time period of November, 1985 through September, 1986. However, neither order states with any degree of specificity or clarity whether Petitioner is being charged with misconduct for pre-appeal and post-appeal events and occurrences. Petitioner was entitled to know the exact nature of the charges against him before his phantom conviction of misconduct during the appellate process (i.e., before 4/1/87 and/or before 6/17/87 and/or before 8/5/87); In re Ruffalo, supra, at 550; Theard v. United States,

354 U.S. 278, 282 (1957). None of the so-called charges of misconduct, either pre-appeal or post-appeal, were contained in any complaint purporting to be in conformity with 6th Cir. Local Rule 6 and/or 6th Cir. Rules of Disciplinary Enforcement. Consequently, the requirements of due process have not been fulfilled. Ibid; Committee On Professional Misconduct & Griev. v. Johnson, supra, at 173.

Moreover, the two incidents referred to at pages 2 and 3 of the decision filed 4/1/87 are not of sufficient substance to merit disciplinary action under subrule 46(b) or Rule 46(c). Petitioner's failure to pay Booth Lipton $560.00 does not constitute conduct "unbecoming a member of the bar" or a "failure to comply with these rules or any rule of the court". In re Snyder, supra; Migues v. Fibreboard Corp., 662 F.2d 1182 (5th Cir. 1981);

Application of Randolph Phillips, 510 F.2d 126 (2nd Cir. 1975).

The 6th circuit and the hearing panel lacked subject matter jurisdiction, power and authority to use subrules 46(b), (c) Fed.R.App.P. to assist Booth appellees' counsel to collect the sua sponte assessed attorney fees and to act as their collection agency. See State Bar of Michigan v. Daggs, 384 Mich. 729, 733 (1971); State Bar Grievance Administrator v. Jackson, 390 Mich. 147, 152 (1973).

The suspension order of 8/10/87 is unconstitutional on its face, because it neither specifies any suspension period nor any deadline for a prompt post- suspension proceeding. As applied to Petitioner, who paid the $560.00 sanction as ordered (App. M, N , infra, pp. 48a, 49a) and the proceeds were transmitted to Booth Lipton's counsel by the clerk (App. P, infra, p. 51a), the indefinite suspension was totally

unreasonable, unjustified, and contrary to the "principles of right and justice", Selling v. Radford, 243 U.S. 46, 51 ( ) and worked a grievous wrong and injustice upon Petitioner. The effect of the indefinite suspension was intended by the 6th Cir. and Judges Lively, Martin, Nelson and Wellford to be severe and to have irreparable effect on Petitioner. Compare Coston v. Detroit Edison Co., supra, at 28 , where the 6th Cir. only suspended the lawyer from practice pending a certification from the clerk that he had paid the costs and sanctions imposed upon him.

Consequently, the 6th Cir.'s and Circuit Judges Wellford's and Martin's indefinite suspension of Petitioner without a full adversarial/show cause/due process hearing and without assurance of equal treatment and justice under law before an impartial hearing panel, violated the due process clause of U.S. Const. Am. V., FRAP

46(b), (c) and 6th Cir. Rule 6.

THE SIXTH CIRCUIT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE DECIDED BY THIS COURT

There is nothing in the Sixth Circuit's opinion of 8/10/87 which indicates the facts on which it based its clearly erroneous conclusions. Thus, an intelligent review of the court of appeals' ultimate decision is impossible.

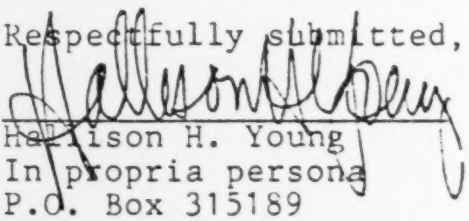
The failure of the Sixth Circuit to make specific findings of fact and conclusions of law, constitutes such a departure from the accepted and usual course of judicial proceedings so as to call for an exercise of this court's power of supervision. See United States v. Claycraft Co., 408 F.2d 366 (6th Cir. 1969); Group Ass'n Plans, Inc. v. Colquhorn, 466 F.2d 469, 471-472 (D.C. Cir. 1972).

The order of 8/10/87, indefinitely suspending Petitioner from practicing before the 6th circuit, is in conflict with the decisions of the Supreme Court on the same matter in In re Ruffalo, supra; In re Snyder, supra. As a result, this court should grant certiorari in this matter to resolve this conflict on these issues of importance to our system of jurisprudence.

CONCLUSION

Accordingly, this court should review and correct the erroneous decision and orders of the 6th Circuit by granting the petition for a writ of certiorari. Upon granting certiorari, the decision and orders of the 6th Circuit should be reversed

Respectfully submitted,



Harrison H. Young
In propria persona
P.O. Box 315189
Detroit Mich 48231
(313) 567-7050

Nov 3, 1987

A P P E N D I X

APPENDIX

APPENDIX

APPENDIX

APPENDIX A

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
No. 85-1875

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK C. PASTERNAK, et al.,

Plaintiffs-Appellants,

v.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

SAGITTARIUS RECORDING CO., et al

Defendants-Appellees.

DECISION [Filed April 1, 1987]

BEFORE: MARTIN, WELLFORD and NELSON, Circuit Judges.

PER CURIAM. The plaintiffs in this diversity action appeal from a summary judgment in favor of the defendants. The district court held that the plaintiffs had failed to produce any specific evidence that would indicate the defendants had knowledge of or took part in the conduct that led to the loss of certain tax

advantages the plaintiffs hoped for when they invested in a tax shelter for which the defendants provided professional services. The district court decided the case correctly, we belief, and we shall affirm its judgment.

I

Sagittarius Recording Company undertook to organize a joint venture, Sioux Shares Company, in which plaintiffs were investors. Sioux Shares was to lease from Sagittarius "master" recordings by several well known musical performers. (Master recordings are original recordings of which pgonograph records and cassette tapes purchased by the public are duplicates.) Upon payment by Sioux Shares of the lease price, Sagittarius was to transfer possession of the master recordings to Sioux Shares. Investors in the venture were to receive the advantage of Sioux Shares' investment tax credit and were to share in

any profits realized on the production and sale of recordings.

The transaction fell apart when Sagittarius failed to deliver the master recordings to Sioux Shares. The plaintiffs brought suit against Sagittarius and against several individuals, a wholesaler of the masters, and appellee Booth, Lipton & Lipton, a law firm that had provided the tax opinion letter used by Sagittarius in its offering statement. The plaintiffs charged Both Lipton with misrepresentation. Booth Lipton impleaded the accounting firm of Rose, Feldman, Radin, Pavone & Skehan, the other appellee in this case, asserting that if Booth Lipton were liable, it was because of erroneous information received from Rose Feldman.

A consent judgment in the amount of $400,000 was entered against Sagittarius. Thereafter, the district court granted summary judgment to Booth Lipton, dismissing both that firm and Rose Feldman

from the case. The judgment was certified as final and appealable under Fed. R. Civ. P. 54(b), even though other defendants remained in the case. The trial court failed to set forth with particularity the reasons for the Rule 54(b) certification, and we are required neither to assume the existence of valid reasons nor to search the record for such reasons ourselves in determining whether we have jurisdiction to hear the appeal. COMPACT v. Metropolitan Government of Nashville, 786 F.2d 227 (6th Cir. 1986); Solomon v. Aetna Life Insurance Co., 782 F.2d 58 (6th Cir. 1986). Nine days after entry of the order appealed from here, however, the court entered a default judgment dismissing the action against all remaining defendants; the dismissal cured the jurisdictional problem that would otherwise have confronted us.

The plaintiffs filed a timely notice of appeal. Unfortunately, that was one of

the few matters that plaintiffs' counsel did handle in a timely manner. Subsequent filing deadlines were ignored, and the appeal was dismissed on November 25, 1985, for want of prosecution. We reinstated the appeal in an order dated January 14, 1986. The procedural defaults of plaintiffs' counsel continued, and counsel was informed by the court that should the joint appendix not be filed by September 5, 1986, the appeal would again be dismissed. The appendix arrived on the following Monday, September 8, 1986, but the court granted an accompanying motion to permit filing out of rule. Booth Lipton has moved for reconsideration of this extension of time and for an award of attorney fees in the amount of $560. The motion for reconsideration will be denied, but the request for attorney fees will be granted.

II

As the district court correctly observed, any loss suffered by the plaintiffs was due to the failure of Sagittarius to deliver the master recordings. The district court held that Booth Lipton was not responsible for the plaintiffs' loss because the plaintiffs could produce no evidence that Booth Lipton was aware that Sagittarius did not intend to deliver the master recordings.

We agree with the district court that the plaintiffs failed to demonstrate the existence of a genuine issue of material fact on this point, as it was their obligation to do under Fed. R. Civ. P. 56. The plaintiffs have invited our attention to a large number of depositions and documents that supposedly demonstrate guilty knowledge on the part of Booth Lipton. On examination, most of these documents turn out to involve peripheral

matters that have nothing to do with the issue at hand. Others (the Van Arsdale and Pasternak depositions) are not even part of the record, never having been filed with the district court. (Plaintiffs did give notice of the filing of the Van Arsdale deposition, but the deposition does not appear to have been filed.)

the only items that seem worth discussing at all are certain letters and internal memoranda of Booth Lipton that accompanied a "supplemental response to ... [the] motion for summary judgment." Taken out of context, some of these materials might be construed as supporting the plaintiffs' position. For example, a memorandum of March 9, 1981, states that the "client is unreliable and subject to pressure -- in sum, unusually high possibility, that our opinion will be litigated. ..." A memorandum of March 11, 1981, recommends that an expanded opinion be

given "concerning title to the various masters" and refers to "circumstances that have subsequently come to light with respect to the 1980 deals" of a principal officer of Sagittarius. These "circumstances", the memorandum said, necessitated greater care on the part of Booth Lipton. But none of these remarks appears to have anything to do with any perception on the part of Booth Lipton that Sagittarius was not going to deliver the masters. The statements were made by the lawyers in the course of their preparation of a "non-security opinion," issued to assure the client that registration would not be necessary under the federal securities laws. The problems with the client and with the "1980 deals" had to do with the fact that the Securities and Exchange Commission was questioning whether a 1980 offering should not have been registered. The concerns of the people at Booth Lipton had to do with the applicability of the registra-

tion provisions of the securities laws, not with whether Sagittarius was going to deliver the masters.

The plaintiffs also argue that even if the masters had been delivered, two of them would not have been eligible for the investment tax credit because they had been used previously. But that issue could not have arisen until the masters were delivered, and no delivery ever occurred. The immediate cause of the plaintiffs' loss was the non-delivery; whether plaintiffs might have suffered some loss had delivery occurred, and whether Booth Lipton knew or should have known that two of the masters were used, are questions the answers to which have no relevance in the absence of a delivery.

The district court correctly held that the plaintiffs failed to demonstrate the existence of any genuine issue of material fact in this case.

III

As noted in Part I, the history of this case is riddled with missed deadlines on the part of counsel for the plaintiffs-appellants. We believe that Booth Lipton's motion for attorney fees meets the tests of 28 U.S.C. §1927. Cf. Coston v. Detroit Edison Co., 789 F.2d 377 (6th Cir. 1986). Booth Lipton represents that it has incurred excess costs of $560.00 for eight hours of attorney time valued at $70.00 per hour. We consider this amount to be reasonable. Appellants' counsel is ORDERED to pay Booth Lipton the sum of $560.00 forthwith and provide certification of such payment to the clerk of this court within 30 days from the date hereof. Counsel is to pay this amount personally, and is not to pass the cost on to his clients.

The judgment of the district court is AFFIRMED, and the request for attorney fees is GRANTED on the terms stated.

APPENDIX B
[FILED MAY 07 1987]
No. 85-1875

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK C. PASTERNAK, et al.,

Plaintiffs-Appellants,

v.

SAGITTARIUS RECORDING CO., et al.,

Defendants-Appellees.

ORDER

BEFORE: Martin, Wellford and Nelson, Circuit Judges

On PETITION FOR REHEARING.

Anxious, presumably, to have this appeal decided on the merits, and aware of this court's concern as to its jurisdiction to hear the appeal if the action had not yet been terminated in the district court, counsel for the appellants failed to apprise us of the actual status of the case in the trial court when asked, at oral argument, whether all outstanding issues had been resolved below. Now that the

appeal has been decided against them on the merits, appellants invite us to reconsider our decision because of our misapprehension as to the status of the case in the trial court. We decline to accept the invitation.

the judgment appealed from -- a judgment dismissing the Booth Lipton and Rose Feldman firms from the case -- did not finally terminate the action: defendants A.V.I. Records Inc. and A.V.I. Distributing Corp. remained in the case after the other defendants were dismissed. Although the trial court certified the dismissal as an appealable final judgment under Rule 54(b), Fed.R.Civ.P., the certification failed to set forth with particularity the grounds on which it was based. Under Solomon v. Aetna Life Insurance Co., 782 F.2d 58 (6th Cir. 1986), the deficiencies of the certification presented us with an obvious jurisdictional question. When we

sought to probe the issue at oral argument, we were assured by appellants' counsel that any jurisdictional problem had been cured by the subsequent entry of a default judgment against all remaining defendants. This court was clearly given to understand that there were no issues remaining to be adjudicated in the trial court.

Now we are informed that although default judgments were entered against the A.V.I. defendants on the issue of their liability, the amount of damages remains to be determined. Because it thus appears that the action has not been finally terminated in the trial court, we have two options; we can dismiss the appeal on jurisdictional grounds, or we can make our own determination as to the propriety of the trial court's Rule 54(b) certification. We choose the latter option. The question of the liability of the Booth Lipton and Rose Feldman firms is easily decided and it is

easily separable from the other issues presented in this case. It would be unjust, in our view, for the appellees -- who have already been subjected to more than their share of vexation and delay -- to be forced to remain in jeopardy under the final sentence of Rule 54(b), which, failing an appeal, makes the order dismissing appellants "subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." Under the facts of this case we are satisfied that the Rule 54(b) certification was appropriate.

The other issues raised in the petition for rehearing have no merit and merit no comment. The petition is DENIED. Appellants' counsel is reminded of his obligation to pay Booth Lipton $560.00 forthwith and certify the fact of

payment to the clerk. No further motions or petitions will stay that obligation.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman/[initials]

Clerk

APPENDIX C
[FILED JUN 17 1987]
No. 85-1875

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK C. PASTERNAK, et al.,

Plaintiffs-Appellants,

v.

SAGITTARIUS RECORDING CO., et al.,

Defendants-Appellees.

ORDER

BEFORE: Martin, Wellford and Nelson,
Circuit Judges

On April 1, 1987, this court filed its decision affirming the district court's judgment. In response to the appellees' motion for attorney fees due to the appellants' counsel's misconduct during the pendency of this appeal, we ordered appellants' counsel "to pay Booth Lipton the sum of $560.00 forthwith and provide certification of such payment to the clerk of this court within 30 days from the date hereof. Counsel is to pay this amount

personally, and is not to pass the cost on to his clients." Appellants' counsel did not pay as ordered.

Subsequently, the appellants filed a petition for rehearing in which they questioned this court's jurisdiction. By order entered May 7, 1987 (after a 30-day deadline had passed), we denied that petition. We also said: "Appellant's counsel is reminded of his obligation to pay Booth Lipton $560.00 forthwith and certify the fact of payment to the clerk. No further motions or petitions will stay that obligation."

Appellants' attorney has not complied with this court's orders. It is therefore ORDERED, pursuant to Fed.R.App.P. 46(c), that Mr. Hallison Young show cause why his name should not be withdrawn from the names of those qualified to practice law before the Sixth Circuit Court of Appeals and why

this court should not direct that the proper state ethics commission be advised of his conduct in this court. Counsel will have an opportunity to respond within twenty days.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman

Clerk

APPENDIX D
[FILED JUL 22 1987]
No. 85-1875

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK C. PASTERNAK, et al.,

Plaintiffs-Appellants,

v. ORDER

SAGITTARIUS RECORDING CO., et al.,

Defendants-Appellees.

(In re: Hallison H. Young, Attorney for plaintiffs-appellants)

BEFORE: Martin, Wellford and Nelson, Circuit Judges

On April 1, 1987, in a per curiam decision, this court affirmed the judgment of the district court "that the plaintiffs failed to demonstrate the existence of any genuine issue of material fact in this case." We observed, furthermore, that "the history of this case is riddled with missed deadlines on the part of counsel for the plaintiffs-appellants." After discussion of this matter at oral argument, we ordered,

under 28 U.S.C. § 1927,[1] that appellants' counsel pay the attorneys for appellees the sum of $560.00.

On April 15, 1987, counsel for appellants filed a petition for rehearing asserting, among other things, that "this panel erroneously concluded that the 10/30/85 'default judgment' cured the jurisdictional problem" in the record. At oral argument, Hallison H. Young, counsel for appellants, had represented to the court that all other parties in the case, besides appellees, had been "defaulted out" (or dismissed) and that there was no jurisdictional problem about hearing and

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1. §1927. Counsel's liability for excessive costs

   Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C.A. §1927 (Supp. 1987).

deciding the case on its merits. Mr. Young's petition to rehear, after his clients lost on the merits, took a directly contrary position to the assurances given the court in oral argument. We decided that appellees had "already been subjected to more than their share of vexation and delay," and denied the petition for rehearing; at the same time we reminded appellants' counsel of his personal "obligation to pay Booth Lipton $560.00 forthwith."

On June 17, 1987, having been advised that Mr. Young had not paid this obligation or demonstrated any reason for not satisfying the order of this court to that effect, we ordered Mr. Young to show cause why his name should not be withdrawn from the names of those qualified to practice law before this court and why we should not advise the state ethics commission of his conduct in this cause. Mr. Young, through

through counsel, filed a response to the order to show cause and a request for "evidentiary and due process hearing pursuant to FRAP 46(b) and (c)." This was followed by an "emergency motion for appointment by the Chief Judge of a panel of three judges other than the complaining panel and a motion to dismiss order to show cause." We are advised that the Chief Judge has denied this subsequent motion.

Among other reasons in the record, we assessed attorney fees against Mr. Young because of the following deficiencies on his part in respect to the appeal on the merits:

> 1) Failure to file the standard transcript order form in a timely fashion, bringing about dismissal of the appeal for want of prosecution. (See order of 11/27/85).
>
> 2) After grant of and extension of time to file his brief, failure to file appellants' brief within the extended time.

3) After a directive of default in this respect had been issued to Mr. Young, he filed a brief without the required corporate disclosure form.

4) Failure to file the required joint appendix within the two extended time periods granted to appellant. A further request for additional time was objected to by appellees, necessitating still further time and work on the part of appellees' counsel and the clerk's office.

The court will grant a hearing as requested under Federal Rule of Appellate Procedure 46 on the show cause order and on this order to consider "appropriate disciplinary action" (including action under 46(b), if any such action is indicated), on the appellate record and proceedings in this case with respect to the conduct of said attorney for appellants. The hearing will take place in the 6th floor courtroom at 3:45 p.m. on Wednesday, August 5, 1987.

ENTERED BY ORDER OF THE COURT
John P. Hehman, Clerk
/s/ Leonard Green
Leonard Green
Chief Deputy Clerk

APPENDIX E

[FILED JUL 30 1987]

No. 85-1875

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK C. PASTERNAK, et al.,
Plaintiffs-Appellants,

v. ORDER

SAGITTARIUS RECORDING CO., et al.,
Defendants-Appellees.

(In re: Hallison H. Young, Attorney for plaintiffs-appellants)

Before: LIVELY, Chief Judge

Upon consideration of a motion filed on behalf of respondent Hallison H. Young, seeking the appointment by the Chief Judge of a panel of three judges other than the complaining panel, and further seeking dismissal of the order to show cause filed on June 17, 1987; it is

ORDERED that the motion for appointment of a panel of three judges and for dismissal of the show cause order is hereby denied; the panel that issued the show cause order may set the matter for hearing at its convenience.

ENTERED BY ORDER OF THE COURT
John P. Hehman, Clerk
/s/ Leonard Green
Leonard Green
Chief Deputy Clerk

APPENDIX F
[FILED AUG 10 1987]
No. 85-1875

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK C. PASTERNAK, et al.,
Plaintiffs-Appellants,

v. ORDER

SAGITTARIUS RECORDING CO., et al.,
Defendants-Appellees.

(In re: Hallison H. Young, Attorney for plaintiffs-appellants)

Before: MARTIN, WELLFORD, and NELSON, Circuit Judges.*

Pursuant to this court's prior order dated July 22, 1987 a hearing was granted attorney Hallison H. Young on August 5, 1987 to show cause why his name should not be stricken from the rolls of those qualified to practice before this court in respect to his failure to adhere to prior court orders and requirements in the course of this appeal. Mr. Young, and his

* The Honorable David A. Nelson did not participate in the hearing of August 5, 1987, or in this decision.

counsel, appeared.

The Chief Judge of the court has denied Mr. Young's motion that another panel of this court be designated in respect to this hearing held pursuant to Federal Rules of Appellate Procedure 46.

We advised Mr. Young that we overruled his motion that this panel is disqualified and that it should recuse itself from further participation in this case. We found no basis in fact or in law in the record that this panel is biased or prejudiced or that there is any appearance of impropriety in our hearing and deciding the sanctions aspect of this case.

We noted that a mandate had issued in this case on May 18, 1987 following our April 1, 1987 per curiam decision which, among other things, granted the motion of appellees' counsel for assessment of attorney fees under 28 U.S.C. §1927 against Mr. Young. The latter's April 15, 1987

motion for reconsideration was denied. The April 1, 1987 order is final, no stay having issued based on any pending proceeding initiated by Mr. Young or other party.

The presiding judge inquired whether payment of the fee assessed had been made. After consideration, it was stated that payment would be effectuated by Monday, August 10, 1987. The court deemed this acceptable, and it is ordered that payment in full be made and certified to the court by August 10, 1987.

This order is entered nunc pro tunc August 10, 1987.

ENTERED BY ORDER OF THE COURT
John P. Hehman, Clerk
/s/ Leonard Green
Leonard Green
Chief Deputy Clerk

APPENDIX G
[Filed Aug 10 1987]
No. 85-1875

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK C. PASTERNAK, et al.,
Plaintiffs-Appellants,

v. ORDER

SAGITTARIUS RECORDING CO., et al
Defendants-Appellees.

IN RE: HALLISON H. YOUNG

Before: MARTIN and WELLFORD,
Circuit Judges.

Having failed to comply with the stipulated agreement made orally at the hearing on August 5, 1987, Hallison H. Young is hereby suspended from the practice of law before the United States Court of Appeals for the Sixth Circuit.

It is so ORDERED.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

/s/ Leonard Green
Chief Deputy Clerk

APPENDIX H
[Filed Aug 25 1987]
No. 85-1875

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK C. PASTERNAK, et al.,
Plaintiffs-Appellants,

v. ORDER

SAGITTARIUS RECORDING CO., et al
Defendants-Appellees.

Information Copy
Dt Ct #82-70500

IN RE: HALLISON H. YOUNG, Attorney

Before: MARTIN and WELLFORD,
Circuit Judges.

Upon consideration of the motions of Hallison H. Young to recall or vacate the court's mandate, and to stay issuance of the mandate pursuant to 28 U.S.C. §2101(f) and Rule 41(f) Fed. R. App. P., it is

ORDERED that the motions be and hereby are denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

/s/ Leonard Green
Chief Deputy Clerk

APPENDIX I
[Filed Sep 10 1987]
No. 85-1875

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK C. PASTERNAK, et al.,
Plaintiffs-Appellants,

v. ORDER

SAGITTARIUS RECORDING CO., et al
Defendants-Appellees.

IN RE: HALLISON H. YOUNG, Attorney

Before: MARTIN and WELLFORD,
Circuit Judges.

Upon consideration of the second motion of Hallison H. Young, Esq., to disqualify Judges Boyce F. Martin, Jr., and Harry W. Wellford, nunc pro tunc; it is

ORDERED that the motion be, and it hereby is, denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

/s/ Leonard Green
Chief Deputy Clerk

APPENDIX J

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Case No. 85-1875

Appeal from: MIE-DET

Frank C. Pasternak; Sioux Shares Co.; Antoine J. LaBadie; Harold J. Barbret; James H. Wickham; Otto J. Blattler; Ona M. Greve; David G. Brendel; Robert C. Baker; James A. Graver; David Semeniuk; Gerald Trembley; John Hirschmann; Richard Szymanski,

Plaintiffs-Appellants

vs.

Sagittarius Recording Co.; Frank J. Van Arsdale; Tony Mesi; Shelley Whalen; Booth, Lipton, & Lipton; Philip Pierce; Frederick M. Mintz; Edward V. Miller Co.; Edward V. Miller; A.V.I. Records, Inc.; A.V.I. Records Distributing Corp.; Raymond Harris; Jeffrey P. Kranzdorf; Thomas Takayoshi; Ray Kohn; Harris & Leach,

Defendants-Appellees

Dist. Docket No.	Date of Judgment:
82-70500	09/24/85
Dist. Judge	Date NOA filed:
Cohn	10/24/85

* * *

Date		Filings-Proceedings
1985		
10/30	1)	Notice of Appeal filed
***		
11/18	6)	Appearance of H.H.Young for appellants
11/18	7)	Pre-Argument Statement from appellant
***		
12/04	9)	Transcript order from ct. reporter

Date		Filings-Proceedings
1986		
01/14	10)	Order: appeal reinstated (Lively, J.)
***		
04/24	14)	Motion/Appellant: for extension of time to file brief and joint appendix to 07/31 (m-04/22)
***		
05/02	17)	Ruling: letter granting extension; appellant brief due 5/20; appellee brief due 6/19; appendix due 7/10
05/21	18)	Show Cause: letter to appellant brief due 6/4; appellee due 7/7; appendix due 7/28
***		
06/05	20)	Letter: returning appellant brief for corrections [corp. dis] (due 06/19)
06/11		Brief/Appellant: (10)(m-6/2)
***		
08/04	22)	Show Cause/letter: appendix due 8/18
08/18	23)	Motion/appellant: for extension of time to file joint appendix to 09/29; or alternatively, to file joint appendix out of time (m-08/15)
***		
08/22	25)	Order: appeal dismissed unless appellant submits joint appendix for filing on or before 9/5/86; appellee request for attorney fees and costs denied [4(f)]
*8/21	26)	Appearance of F.A. Patmon for appellant
***		
09/08	28)	Motion/Appellant: extension, joint appendix (m-none) [motion granted; JPH/las/lg]
09/15	29)	Motion/Appellee [Booth]: to reconsider granting of extension of time; sanctions; award of attorney fees [$560.00] (m-09/11)

Date		Filings-Proceedings
1986		
***		
12/24	34)	Order: appellees' motions for reconsideration of the ext. for filing appendix and for attorney fees will be considered at oral argument (Martin,J)
1987		
02/10		Cause argued by Hallison H. Young for appellant, * * *
04/01	35)	Per curiam opinion: affirmed; request for attorney fees granted (appellant counsel order to pay Booth Lipton $560 forthwith and provide certification of such payment to clerk within 30 days from date hereof; counsel to pay amount personally and is not to pass costs on to clients (Martin, Wellford, Nelson, JJ.) N.F.P.
04/15	37)	Rehearing Petition by Appellant (m-04/14)
***		
05/07	40)	Order: petition for rehearing denied; appellant counsel to pay Booth Lipton $560.00 forthwith and certify fact to the clerk; no further motions or petitions will stay that obligation (Martin Wellford and Nelson, JJ.)
***		
06/17	43)	Order: appellant counsel (H. Young) to show cause by 07/07 why name not be withdrawn, etc. (Martin, Wellford, Nelson,JJ.)
07/07	44)	Response/appellant [counsel]: to entry #43 (m-
07/07	45)	Motion/appellant [counsel]: for due process evidentiary hearing re entry #43 (m-07/06)

Date		Filings-Proceedings
1987		
07/14	46)	Motion/appellant: appoint impartial panel for due process hearing; dismiss show cause of 6/17; expung record & file of 6/17 order w/memo in support (m-none)
07/22	47)	Order: motion to appoint impartial panel for due process hearing and motion to dismiss order to show cause denied; hearing on show cause order and on order to consider "appropriate disciplinary action" to be held on 8/5/87 at 3:45 p.m. in 6th floor courtroom (Martin, Wellford and Nelson, JJ.)
07/29	48)	Motion/appellant: for issuance of hearing subpoenaes duces tecum; and demand for documentary evidence (m-none)
07/30	49)	Order: motion for appointment of panel of 3 judges and for dismissal of show cause order denied; panel that issued show cause order may set matter for hearing at its convenience (Lively, J.)
07/31	50)	Motion/appellant: to disqualify Judges Martin,Wellford, and Nelson from participating in any case involving attorney Young or his counsel (m-7/27)
08/04	51)	Responseoappellant: objections to entry #47 (m-none)
08/04	52)	Response/appellant: to entry #43 & #47 (m-none)
08/04	53)	Motion/appellant: for pre-hearing ruling on hearing procedure & conduct of hearing (m-none)

APPENDIX K

No. 85-1875

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK C. PASTERNAK, et al.,

Plaintiffs-Appellants,

v.

SAGITTARIUS RECORDING CO., et al.,

Defendants-Appellees.

PROCEEDINGS HELD before the HONORABLE BOYCE F. MARTIN, JR. and HARRY W. WELLFORD, United States Circuit Judges, at the United States Court of Appeals, 524 U.S. Post Office and Courthouse, Cincinnati, Ohio 45202, on Wednesday, August 5, 1987.

Cincinnati, Ohio 45202
Wednesday, August 5,1987
Afternoon Session

- - -

THE CLERK: 85-1875, in the matter of Hallison H. Young.

JUDGE MARTIN: Very well, Mr. Patmon.

MR. PATMON: Frederick A. Patmon, attorney for Hallison H. Young

JUDGE MARTIN: You may come up to counsel table and have a seat.

MR. PATMON: Thank you, Your Honor.

JUDGE MARTIN: Mr. Patmon.

MR. PATMON: Yes, sir.

JUDGE MARTIN: As you recognize, we are here today to consider a matter that presents both to us and to your client a very serious and difficult responsibility. We are faced with an issue that goes directly to the integrity, the power and the respect of our court by both the Judges who sit on that court and the lawyers who appear before us.

Because you have within the last several weeks filed a number of documents, including statements of the nature of the case as you see it, I think it's appropriate that I today make a brief statement of the posture of the case as we seek it; and you may have a seat if you wish.

MR. PATMON: Thank you.

JUDGE MARTIN: Your motion to disqualify the panel presents the threshold question for this hearing. The Chief Judge has denied that motion, and I believe you have received a copy of that motion.

You have received a copy of the Order of the Chief Judge denying your motion to disqualify the panel.

MR. PATMON: No, sir, I haven't.

JUDGE MARTIN:a Well, it was forwarded to the address given on your last document filed with the court; and

therefore, that order having been entered, we will proceed.

Judge Nelson will not participate in these proceedings, but Judge Wellford and I will proceed with this scheduled hearing under Federal Rule of Appellate Procedure 46.

You will remember that this case was heard by our panel on February the 10th 1987. We rendered our decision on April 1st, 1987. We granted the request of counsel for one of the parties, Booth Lipton, that certain aspects of the case warranted the award of attorneys' fees under 28 USC 1927.

A petition for rehearing by the panel only was filed on April 15th 1987. That motion was denied by unanimous panel on May 7th, 1987. No motion to reconsider was filed, nor was a request for a stay made; and our mandate issued on May 18th, 1987.

That opinion, therefore, became a final, unreviewable judgment of this court. No petition for certiorari has been filed, nor have any other steps been taken to stay that judgment.

You will remember that that judgment directed that Mr. Young pay Booth Lipton the sum of $560.00 and certify to us that that payment had been made. That was not done; and because that mandate has issued, Booth Lipton may execute against Mr. Young.

However, because we conditioned our order that that be paid directly, and that that fact be reported to us, we issued the Show Cause Order to which you have responded on two occasions.

The question then remains. Has Mr. Young made that payment and, if so, why not. And that is the only issue that we are considering today.

MR. PATMON: Your Honor, under the circumstances, and if I might respond, may I --

JUDGE MARTIN: You may.

MR. PATMON: In the light of my background in being a Michigan lawyer and with the history of the Michigan grievance procedure and the formality of it, I have raised a number of -- and with my understanding and involvement in many proceedings, disbarment proceedings and proceedings involving judges, particularly in the State of Michigan, is that I have been somewhat very much concerned about this proceeding and the manner in which it has been conducted and is being conducted.

And one of my initial concerns is I was informed by the Clerk's Office that this was a non-public proceeding. I would like to know, is it or isn't it --

JUDGE MARTIN: Well, the courts --

MR. PATMON: -- if I may ask the court?

JUDGE MARTIN: The courts of this country are open to the public, as far as I know, unless you've asked that it be closed.

MR. PATMON: I was informed, and the reason is I had requested certain information via pleadings and vis Mr. Green, and via Ms. Marguerite Elizen, and I was informed that the information wasn't available to me.

JUDGE MARTIN: The proceedings of this court operate, as I have outlined to you, under the rules as promulgated by the

Supreme Court and adopted by Congress. I don't see any difference in this proceedings than any other proceeding in this court.

MR. PATMON: So, if I may ask, we have filed a number of motions, what rules then govern this proceeding; what rules of procedure govern this proceeding, your Honor?

JUDGE MARTIN: We are proceeding under Federal Rules of Appellate Procedure 46.

MR. PATMON: Well, Federal Rule 46 does not set forth any procedure with respect to trial proceedures or who --

JUDGE MARTIN: This is not a trial. We don't have any jurisdiction.

MR. PATMON: Well, what is it?

Beg pardon?

JUDGE MARTIN: We'd like -- I stated the question as we see it.

MR. PATMON: Yes, sir.

JUDGE MARTIN: And I'll restate it.

MR. PATMON: Yes, sir.

JUDGE MARTIN: The judgment of our court became a final, non-appealable, non-reviewable order on May 18th, 1987, when the mandate of this court issued. That judgment directed that Mr. Young pay to Booth Lipton the sum of $560.00, and that that payment be certified to us.

We have been advised that has not been done; there os no certification in this record.

Has he paid it?

MR. PATMON: Is that the issue before the court?

JUDGE MARTIN: That's the issue.

MR. PATMON: Well, that was not my understanding, that that was the issue, from either reading either show cause or from reading the 6/17 show --

JUDGE MARTIN: Well --

MR. PATMON: If I may finish.

JUDGE MARTIN: You may finish.

MR. PATMON: Yes sir.

That was not my understanding, that that was the issue before the court, from reading either the 6/17 show cause order or from reading the 7/22 Order to Show Cause. That is not the reason why we were here, and that was not what we had responded to; and that was not what the purpose of the proceeding was for at all.

JUDGE MARTIN: Well --

MR. PATMON: So that, to me, that is a new issue, completely new, and I really -- that's something that I would have to --

JUDGE MARTIN: Well, the answer is yes or not. Has he paid it?

MR. PATMON: Beg your pardon?

JUDGE MARTIN: The answer is yes or not. Has it been paid?

MR. PATMON: Well, he responded to that in his proceeding.

JUDGE MARTIN: That's the final judgment. The judgment is not appealable.

MR. PATMON: Yes, but that, you mean, that is not -- you're saying that's the issue?

JUDGE MARTIN: If he does not pay it, we do not want him practicing before our court, because he has refused to comply with an order of our panel. There is a judgment that is a final judgment.

MR. PATMON: If I might read from your 16th, June 16th, 1987 order, and your July 22, 1987 order, neither of those set out -- conform with what you say is at issue, and that is not what we have addressed, and it is not within the confines of the law.

JUDGE MARTIN: Well, if --

MR. PATMON: I submit that is a separate issue.

JUDGE MARTIN: Fine. If you don't understand the order, I am explaining it to you now.

MR. PATMON: You say --

JUDGE MARTIN: The order is --

MR. PATMON: I mean, that's what --

JUDGE MARTIN: Has he paid it or has he not paid it?

MR. PATMON: And that's the only thing he is charged with?

JUDGE MARTIN: That's the only issue we have.

MR. PATMON: That's the only issue, your Honor?

JUDGE MARTIN: If he doesn't choose to pay it, he can practice somewhere else.

MR. PATMON: Oh, so that's the o nly issue --

JUDGE MARTIN: That's the only issue.

MR. PATMON: -- Insofar as this court is concerned?

JUDGE MARTIN: That's the o nly issue we have before us.

MR. PATMON: So, the only issue is whether or not he pays it; and if he had the ability, if he would have paid it and had the ability to pay it back when the court granted it, when the court issue the proceeding, this matter would never have been --

JUDGE MARTIN: It would have been never started, and we, if he pays it this afternoon and certifies it, it's dropped at that point.

MR. PATMON: May I have a brief moment to confer?

JUDGE MARTIN: You may.
(Pause in proceedings.)

MR. PATMON: Your Honor, I think if the court could look at Mr. Young's response, it would indicate what his response was with respect to the question of payment at that time. And, if that is the only issue before the Court, then Mr. Young will pay it and certify to the court that it has been paid, and that will be done forthwith.

JUDGE MARTIN: Very well. How much is forthwith?

MR. PATMON: Well, this instant?

JUDGE MARTIN: Well, I'm not going to -- I couldn't get $560.00 myself right now if I had to.

MR. PATMON: Well, I --

JUDGE MARTIN: I understand that.

MR. PATMON: I mean, you know, it's up to you.

JUDGE MARTIN: I would suggest that we do this, if Judge Wellford is agreeable.
(Conference held between members of the panel.)

JUDGE MARTIN: The clerk will receive by Monday next a certified letter or certified statement from Booth Lipton

that they have received the payment, and that will be sufficient. If it's not received by Monday, then he will be suspended.

Is that agreeable?

MR. PATMON: Well, it would -- I thought we would pay it to the clerk or --

JUDGE MARTIN: Well, we'll transfer --

MR. PATMON: -- and the clerk would certify it to the court.

JUDGE MARTIN: Well --

MR. PATMON: Shall we pay it to clerk or to Booth Lipton; how do you want it paid?

JUDGE MARTIN: Any way you wish.

MR. PATMON: Yes.

JUDGE MARTIN: If it makes you --

MR. PATMON: If it's paid to the clerk, is that sufficient?

JUDGE MARTIN: If it makes you uncomfortable paying it to Booth Lipton --

MR. PATMON: Yes.

JUDGE MARTIN: -- I accept that as a valid reason, and you may send a check payuable to Booth Lipton, certified check to the clerk, and we will then accomplish the passing.

MR. PATMON: Well, if it's just good funds, I mean any type of good funds to the clerk; right, sir?

JUDGE MARTIN: Any kind of cashier's check or --

MR. PATMON: I mean if it's cash or could it be in a bank order?

JUDGE MARTIN: That's fine.

MR. PATMON: That's what I mean, your Honor.

JUDGE MARTIN: And we'll then dispose of it.

MR. PATMON: And so it will be clear, what date is that, specifically?

JUDGE MARTIN: The date of that would be Monday next, which is the 10th of August; and you will comply by that -- we'll see if that is done by the 10th of August. very well.

You may adjourn the court.

CERTIFICATE OF REPORTER

STATE OF MICHIGAN)
COUNTY OF WAYNE) SS.

I, ALTON D. COBB, JR., do hereby certify that I transcribed the proceecings held in open court in the matter of FRANK C. PASTERNAK, et al., Plaintiffs-Appellants, versus SAGITTARIUS RECORDING COMPANY, et al., Defendants-Appellees, civil action No. 85-1875, at the aforementioned time and place; that same was thereafter reduced to written form by mechanical and electronic means; that the foregoing transcript is a full, true and correct transcription of the audiotapes to the best of my ability.

/s/ Alton D. Cobb, Jr.
Alton D. Cobb, Jr.
Certified Shorthand Reporter

DATED: August 19, 1987

DETROIT, MICHIGAN 48226

APPENDIX L

FIRST INDEPENDENCE
NATIONAL BANK

Remitter 1917
Hallison H. Young August 8, 1987

Pay to the Order of
Booth, Lipton **** $560.00*******
Dollars

CASHIER'S CHECK

/s/ Joann M. McClain

(Reverse of check)

In re H.H.Young 6th Cir
Case # 85-1875 per Martin, J.
bench order 8-5-87

APPENDIX M

No. 85-1875

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK C. PASTERNAK, et al.,
Plaintiffs-Appellants,

v.

SAGITTARIUS RECORDING CO., et al.,
Defendants-Appellees.

CERTIFICATION
[Dated 8-8-87]

(IN RE: Hallison H. Young, Attorney for plaintiffs-appellants)

TO: JOHN P. HEHMAN, CLERK

This is to certify that Hallison H. Young herewith subtits Cashiers' check #1917 drawn on First Independence National Bank, Detroit, Michigan dated 8-8-87 in the amount of $560.00 payable to Booth Lipton remitted under the circumstances of and pursuant to the direction and order of Circuit Judge Boyce F. Martin, Jr., bench order of 8-5-87. A copy of the check is attached hereto and the original is enclosed herein.

/s/ Hallison H. Young
Hallison H. Young

8/8/87

APPENDIX N

P - 544 183 508

RECEIPT FOR CERTIFIED MAIL

- - -

Sent to
John P. Hehman

Postage	$ .39
Certified fee	.75
Return receipt showing to whom and date delivered	.70
Total postage	$1.84

[official stamp:
Detroit MI Spec.
Del. GMF USPS
Aug 8 1987]

APPENDIX O

SENDER: Complete Items 1 and 2 when additional services are desired, and complete items 3 and 4.

1.__ Show to whom delivered, date, and addressee's address.
2.__ Restricted delivery.
3. Article addressed to:
John P. Hehman Clerk
U.S. Court of Appeals
4. Article number
P 544 183 508

Type of service:

__ Registered __ Insured
_x_ Certified __ COD
__ Express mail

5. Signature-Addressee
6. Signature-Agent
/s/ C K Spencer
7. Date of Delivery
8/12/87
8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Feb. 1986 DOMESTIC RETURN RECEIPT

APPENDIX P

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
538 U.S.Postoffice & Courthouse Building
Cincinnati, Ohio 45202-3988

John P. Hehman
Clerk

Telephone
(513)684-2953
FTS 684-2953

August 14, 1987

Noreen L. Slank, Esq.
Collins, Einhorn & Farrell
4000 Town Center, Suite 909
Southfield Michigan 48075

RE: No. 85-1875/ Frank C. Pasternak, et al v. Sagittarius Recording Co. et al.

Dear Ms. Slank:

Enclosed find a cashier's check in the amount of $560.00 remitted by Mr. Hallison H. Young, payable to Booth, Lipton. This payment is made pursuant to the direction of the court in connection with the above-captioned appeal. The check was received in this office on Wednesday, August 12, 1987.

Very truly yours,
/s/ John P. Hehman
Clerk

cc: Hallison H. Young
Frederick A. Patmon

APPENDIX R
[Filed AUG 22 1986]
No. 85-1875

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK C. PASTERNAK, et al.,
Plaintiffs-Appellants,

v.

SAGITTARIUS RECORDING CO., et al.,
Defendants-Appellees.

ORDER

Upon consideration of the motion of the appellants for additional time to file the joint appendix or, alternatively, leave to file the joint appendix out of time as well as the response of the appellees opposing the motion and requesting attorney fees and costs,

It is ORDERED that the appeal is hereby dismissed, unless the joint appendix is received for filing by the court no later than September 5, 1986.

The appellees request for attorney fees and costs is denied.

ENTERED PURSUANT TO RULE 4(f)
RULES OF THE SIXTH CIRCUIT
John P. Hehman, Clerk
/s/ John P. Hehman[Initials]

APPENDIX S
[RECEIVED Sept 8 1986]
No. 85-1875

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK C. PASTERNAK, et al.,

Plaintiffs-Appellants,

v.

SAGITTARIUS RECORDING CO., et al.,

Defendants-Appellees.
-and-
BOOTH, LIPTON & LIPTON, Third-Party
Plaintiff/Appellee
v.
ROSE, FELDMAN, RADIN, PAVONE & SKEHAN,
Third-Party Defendant/Appellee

ORDER [Entered
Sep - 8, 1986]

MOTION FOR PERMISSION TO FILE
JOINT APPENDIX OUT OF TIME

MOTION GRANTED
Entered by the Clerk
Pursuant to Rule (4f)
Sixth Cir. Rules.

John P. Hehman/[initials]
Clerk

APPENDIX T

No. 85-1875

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK C. PASTERNAK, et al.,

Plaintiffs-Appellants,

v.

SAGITTARIUS RECORDING CO., et al.,

Defendants-Appellees.

-and-

BOOTH, LIPTON & LIPTON, Third-Party Plaintiff/Appellee

v.

ROSE, FELDMAN, RADIN, PAVONE & SKEHAN, Third-Party Defendant/Appellee

---

APPELLEE BOOTH, LIPTON & LIPTON'S MOTION FOR THIS COURT'S RECONSIDERATION OF CLERK'S SEPTEMBER 8, 1986 ORDER GRANTING APPELLANT'S MOTION FOR EXTENSION OF TIME FOR FILING JOINT APPENDIX

NOREEN L. SLANK (P31964)
Attorney for Booth, Lipton & Lipton
4000 Town Center, Suite 909
Southfield Michigan 48075
(313) 355-4141

* * *

Wherefore, appellee Booth, Lipton & Lipton respectfully request that this Honorable Court:

1. grant reconsideration and reverse the Order entered by the Clerk pursuant to LCR 4(f) which granted appellants an extension of time for filing the Joint Appendix;

2. affirm the understanding of the appellees that the appeal in this case is dismissed;

3. impose sanctions against appellants' counsel as authorized under IOP 12.9, said sanctions to include an award of actual attorneys fees expended, in the amount of eight hours of attorney time at a rate of $70.00 per hour [$560.00].

COLLINS, EINHORN & FARRELL,P.C.
/s/ Noreen L. Slank

Noreen L. Slank (P 31964)
Attorney for Defendant-Appellee
Booth, Lipton & Lipton
4000 Town Center, Suite 909
Southfield, Michigan 48075
(313) 355-4141

Dated: September 10, 1986